

ANDOVER BOARD OF HEALTH
Minutes
September 8, 2014, 6:00 P.M.
CD&P First Floor Conference Room
36 Bartlet Street

The Board of Health Meeting was called to order at 6:00 p.m. Present were Ms. Candace B. Martin, Chairman, Ms. Katherine Kellman, Vice-Chairman, Gopala K. Dwarakanath, M.D., Clerk, and Mr. Thomas G. Carbone, Director of Public Health.

I. Approval of Minutes

- **February 13, 2012 (Executive Session)** – Mr. Carbone stated that the case from the Executive Session of February 13, 2012 is still ongoing, and recommended the Board table approval of the Minutes for six months.

Motion by Ms. Martin, seconded by Dr. Dwarakanath, to table approval of the Minutes of February 13, 2012 (Executive Session) for six months to March of 2015.

- **August 11, 2014**

Motion by Ms. Martin, seconded by Ms. Kellman, to approve the Minutes of August 11, 2014. Unanimous approval

II. Appointments & Hearings

- **6:00 p.m. – Phil Dres for Phil’s Roast Beef – Show Cause Hearing to Suspend or Revoke a Food Establishment License** – Mr. Phil Dres, owner of Phil’s Roast Beef, was present. Mr. Carbone informed the Board that Mr. Dres was on agenda because of another bad inspection. Back in November of 2013, Mr. Carbone conducted an inspection that revealed repeat violations. Mr. Carbone realized there was no food safety person in the restaurant full time and was told an employee was going to take the test. Mr. Dres has just passed the test. The violations include equipment, cleaning and housing issues. When Patricia A. Crafts, Health Inspector, conducted an inspection on July 29, 2014 she found dirtiness and bare hand contact. Since that inspection, Mr. Carbone and Mr. Dres met and Mr. Dres brought in pictures to show the cleaning and maintenance he has done. He cleaned, replaced tiles, and fixed all issues Mr. Carbone cited.

Ms. Martin was concerned because all four inspections in the packet showed the same violations. All of the violations noted cleanliness, bad condition of equipment and poor practice of handling food. She stated that she knew Mr. Dres cleaned, but pointed out that he shouldn’t have needed to be told. He stated that he is a hard worker and has cleaned every day. He stated that his staff consists of young adults who don’t seem to want to do cleaning. He cleans under the grid and the fryers every Saturday, as well as the ceilings. Mr. Dres stated that he takes responsibility and if he

continues to not keep the store clean, he would close the store if the Board requested him to. Ms. Martin told Mr. Dres that he has his name on his business and takes great pride, but he cannot be there all the time. Mr. Dres replied that he works there from 8 a.m. to 9 p.m. every day, and if he could not be there for any reason, he would close the store during that time.

Ms. Martin asked Mr. Dres to describe who works in the store and what do they do. Mr. Dres replied that the staff takes the orders, gives customers their food and takes the money. Mr. Dres is the only one who cooks. Ms. Martin asked why the Board has seen these issues if he is the one doing it all. She asked if he did not understand what needed to be done. Mr. Dres replied that probably was the case in the past, but that now he knows he has to do something better. He stated that sometimes people make mistakes and then have to take care of those mistakes, and that he would be making that his priority. Dr. Dwarakanath told Mr. Dres that the Board wants to hear that there will not be a fifth bad inspection. Mr. Dres told the Board that since going through the ServeSafe class, he now knows to spot clean, change gloves more often, use down time to do more cleaning, and keep bleach and sanitizer towels on hand. He also painted, cleaned the refrigeration, and fixed the gasket. He assured the Board that he would work more diligently to use what he learned so that he doesn't have these issues in the future. The Board suggested that Mr. Dres keep a list displayed for his own knowledge on what needs to be cleaned. The Board decided not to require a consultant to help Mr. Dres at this time.

Motion by Ms. Martin, seconded by Dr. Dwarakanath, to continue the Show Cause Hearing for three months to the December 8, 2014 Board of Health Meeting, with a required inspection by the Health Staff during that time, and if there are any violations, Mr. Dres would be required to be present at that meeting. Unanimous approval.

- **6:15 p.m. – Advanced Fresh Concepts Franchise Corp. @ Stop & Shop # 471 – Variance Request to Allow Acidification of Rice in Lieu of Time and Temperature Requirements** – Mr. Andrew Chan, Regional Manager, was present and was requesting a variance to allow acidification for white and brown rice. The white rice will be certified according to their Standard Operating Procedures (SOP) with recipes and instructions. They will be using an electronic ph meter with two buffer solutions to calibrate the meter. He informed the Board that all the Chefs that have been working there have been trained and any future Chefs will be trained as well. Training is a two week course taken in California with training on sushi, food sanitation and safety, as well as how to test and cook the rice to the correct specifications. Mr. Carbone stated that the documentation he received from Mr. Chen was very comprehensive. Staff has reviewed the paperwork and is comfortable with the proposal. Mr. Carbone stated that he had some recommendations if the Board decided to approve the Variance.

Ms. Kellman asked what manned sampling was. Mr. Chan explained to the Board that they make sushi rolls on a daily basis for lunch and supper, and put them in sample cups. They use a sample dome with ice on the bottom and the samples sit on the ice

with a layover tray. The dome is enclosed. They give out sample cups, napkins, and provide a trash can. They keep the samples at 42 degrees or below to keep the fish at the correct temperature. It is used as a way to promote the item and show the customer that everything is freshly made on the premises. All seafood comes in frozen and is good for three days; one day to thaw and the two days to get it cooked, and everything has a use by date. Mr. Carbone stated that in the handbook there is a discussion of both unmanned and manned samples, and does not think an unmanned station is a good plan. Mr. Carbone would like someone there to oversee the unmanned station. Mr. Chan replied that they use unmanned stations very rarely and there is usually a Chef there. They have hired a company out of Worcester that will pick up a sample of the rice, test it in the lab, and then get the results. Rice has to be cooked at this location before it can be tested. A copy of his SOP book will be in the store.

Motion by Ms. Martin, seconded by Ms. Kellman to approve the Variance request to allow Acidification of Rice in lieu of time and temperature requirements for Advanced Fresh Concepts Franchise Corp. at Stop & Shop # 471, subject to the following conditions:

- 1. Any planned sampling shall be in conformance with the protocol set forth in the “manned sampling” section on page 34 of the handbook.*
- 2. An updated food laboratory validation of the recipe shall be submitted; the validation must be signed and dated.*
- 3. Staff Serve-Safe and Allergen Awareness Certifications must be submitted.*
- 4. The approved Sushi HACCP Plan shall be the one received by the Health Division on August 13, 2014. No changes shall be allowed without prior approval of the Health Division.*
- 5. Acidified rice not used by the end of the day shall be discarded; no acidified rice shall be held overnight.*
- 6. Laboratory testing of the rice processed at the Stop & Shop, Andover location shall be tested in a certified laboratory at least once per year, using chain of custody forms.*

Unanimous approval.

- **6:20 p.m. – Mootone Restaurant – Variance Request to Allow Acidification of Rice in Lieu of Time & Temperature Requirements** – Mr. Carbone informed the Board that Mr. Sam. Wong, new owner of Mootone Restaurant, was not present at the meeting. Mr. Carbone stated that he is comfortable with the documentation with conditions per his memo to the Board of Health.

Motion by Ms. Kellman, seconded by Ms. Martin to approve the Variance to allow acidification of rice in lieu of time & temperature requirements for Mootone Restaurant, subject to the following conditions:

- 7. A food laboratory validation of the recipe shall be submitted; the validation must be signed and dated.*

8. *The approved Sushi HACCP Plan shall be the one dated August 24, 2014. No changes shall be allowed without prior approval of the Health Division.*
9. *Acidified rice not used by the end of the day shall be discarded; no acidified rice shall be held overnight.*
10. *Laboratory testing of the rice processed at this location shall be tested in a certified laboratory at least once per year, using chain of custody forms.*

Unanimous approval

- **6:25 p.m. – Adam Daneau for Bertucci’s Italian Restaurant – Show Cause Hearing to Suspend or Revoke a Food Establishment License** – Present were Mr. Adam Daneau, Bertucci’s General Manager; Mr. Dan Greenberg, Area Director; Mr. Scott D. Handren, Director, Risk Management; and Mr. Christopher T. Vrontas, Attorney representing Bertucci’s Italian Restaurant. Mr. Carbone reviewed with the Board that Bertucci’s had a series of bad inspections and a proposal in November of 2013 to do work on the walk-in refrigerator. There were some communication issues resulting in an Administrative Hearing and the work having to be redone. Mr. Carbone addressed maintenance as well as sanitation issues. Based on that Administration Hearing, Bertucci’s proposed putting on a third Manager, and expanding their Audit process beyond a regular business audit. Recently the Health Division received a complaint, so Patricia Crafts, Health Inspector, conducted an inspection. Ms. Crafts saw that the establishment needed a scrubdown.

Mr. Daneau stated that he now has two Assistant Managers. He stated that now all issues have been addressed. Ms. Martin asked what they have specifically done to address the past issues as well as what they want to do in the future to keep this from happening again. Mr. Greenberg stated that there will be a cleaning in the a.m. and p.m., and that an internal audit has been conducted. They did a dry run about two to three months ago, and then looked at the results over an all-encompassing two day audit. Mr. Greenberg stated that they will have a third Audit before the end of the fourth quarter, and if things are not improved, there will be bonus implications. He stated that he is committed to be at the restaurant weekly to conduct audits. Their Management Team has had a debriefing of what the expectations are going forward. At end of each shift, the Shift Manager has a list of things that has to be done. In the a.m. and p.m., they will scan the document with a signature from the Manager on duty and then the document will be sent to Management. This will continue until things are better. By having a scanned document, he will be able to see who is not doing a proper job. Once Mr. Greenberg is very clear with expectations, they will be adhered to. Mr. Greenberg stated that he thought there was a lack of understanding of what clean really means. He plans on coming into the restaurant unannounced to make sure staff is adhering to the cleaning schedule.

Mr. Daneau stated that in past management said they were going to do something and it wasn’t done. He stated that he would do everything to make sure they will not have to appear before the Board of Health again. Ms. Martin stated that it seems that the

staff is supportive and will do as instructed, so was willing to give them another chance.

Motion by Ms. Martin, seconded by Ms. Kellman, to close the Show Cause Hearing to Suspend or Revoke a Food Establishment License with the understanding that Audits will be continued by Bertucci's from the area and corporate levels and that oversight continues to make sure that there is a good understanding of the cleanliness requirements. Unanimous approval.

III. Discussion

- **Possible Further Regulation of Tobacco** – Mr. Ronald Beauregard, Director of the Tobacco Control Program and Ms. Joanne Martel, R.N., Assistant Director of Public Health, were present. The discussion that followed dealt with three possible additions to the current revised Tobacco Regulations dated June 9, 2014. Mr. Beauregard provided three pages of information to the Board titled “Municipal Tobacco Control Technical Assistance Program” showing Local Summary on Tobacco sales bans in Pharmacies, Municipalities that limit the number of tobacco sales permits, and local policies on increasing the minimum age for tobacco sales.¹

1. **Banning the Sale of Tobacco products at Pharmacies and Health Facilities** – Ms. Martin had some objections to this regulation. She believes if the Board bans the sale of tobacco in these types of businesses, people will just go to another business in town that may not have as strict guidelines in place for compliance. There is also the fact that some Supermarkets have pharmacies in them, so she questioned if they would be subjected to the same ban. Ms. Martel replied that they would be. Ms. Martin felt that a pharmacy such as CVS or RiteAid also sell cessation materials to help people stop smoking. She also stated that she would like all establishments that sell tobacco products to be required to sell tobacco cessation products that are non-prescription so that people could also have the aids to help them quit smoking. Mr. Beauregard stated that there is a new sign required in places that sell tobacco that gives a hotline number for cessation. Ms. Martin stated that she sees places like CVS as more of a convenience store than a health store. Mr. Beauregard pointed out that CVS is now morphing into a health care center because they have clinics, give flu shots, vaccines and medical advice. Ms. Martel agreed, and stated that CVS has voluntarily banned the sale of tobacco. If another pharmacy in town decides to sell tobacco products, there would be no regulations in place to stop them. CVS has decided it wants to be known as a health care institution and the Board of Health's job is to promote good health and keep our residents healthy as well as people who come to town. Ms. Kellman stated that she wasn't sure where she stood on the issue, but was wondering what effect Ms. Martel would see if we did not join the other municipalities in the ban. Ms. Martel stated that we want to be proactive so we don't run into the same problem as when a Hookah Bar wanted to open in town. She also stated that even though CVS is the only pharmacy in town,

¹ The three pages were inserted into the Agenda Packet after page 78.

we could have more come into town in the future. Dr. Dwarakanath stated that he thought if a business sells health products, maybe they should not be selling tobacco also.

2. **Limiting the Number of Establishments holding a Tobacco Products Sales License** – Ms. Martin stated that we currently have fourteen (14) establishments that sell tobacco products. Under section (a), the Board could keep a cap at that number and let another establishment take over if one went out of business, as long as they applied within a 60 day period of time. Also, if someone at a fixed address sells a business, and the buyer moves their location, they can keep their license. Mr. Beauregard stated that he didn't want to target small businesses because tobacco is a legal product, and some of these businesses depend on tobacco sales. The Board supported this provision. Under section (b), if any establishment goes out of business, the permit would be retired and then the number of establishments that could hold a Tobacco Sales Permit would be decreased. The Board did not support this provision. Under section (c), a new applicant for a Tobacco Sales License would not be able to open within 500 feet of a school. The Board supported this provision.
3. **Increasing the Minimum Legal Age to buy Tobacco and Nicotine Delivery Products from 18 to 19, 20, or 21** – Ms. Martin was most in favor of this regulation. She believes that this may discourage some people from starting at a younger age. Mr. Beauregard suggested changing the wording in the regulations from "minor" to "individual under the age of 21", if that is the age the Board decides upon. Ms. Martel stated that if we do things locally, then maybe the State will follow in time.

Motion by Ms. Martin, seconded by Ms. Kellman, to propose that the Board submit the wording to raise the legal age to 21, and take out the word "minor". Unanimous approval.

- **Permit Streamlining** – Mr. Carbone informed the Board that the Division Heads and Developers had some good frank conversations. We were called out on some of our policies, but there has been some positive reinforcement as well. Some think we shouldn't regulate this way at all, but we have to because of State laws. We have had some great suggestions on how we could improve services, and Mr. Carbone is hoping that within the next 4-6 weeks he will have the feedback ready for the Board to review. We made it clear that we are looking for the good and the bad. The hard comments are the ones that are really counted. In a meeting today we found we fumbled the ball in a couple of ways and discussed how that could change with the people we work with in the future.

IV. Old Business

- **Casco Crossing Concrete Repair Status Update** – Mr. Carbone informed the Board that he did not receive a response to the Board's request for a written update. Mr.

Matthew Gardner has resigned his position as Property Manager. Mr. Carbone has communicated with the owners, Mr. Steve Stapinski and Mr. King Weinstein. In an e-mail from Mr. Stapinski, he stated he was unaware of providing the Board with a report or attending the meeting this evening. Ms. Martin was disappointed that this keeps getting pushed out. When Mr. Gardner came before the Board in July, the Board's understanding was that everything was in order to start, but now July and August have passed and all they have had is people meeting on site to develop plans. She was under the impression that the State required this repair to be done by November 1, 2014. Mr. Carbone stated that Mr. Stapinski argued with Mr. Carbone that the State Sanitary Code doesn't address this issue and stated that the Board of Health doesn't have any jurisdiction over the sidewalks. Mr. Carbone stated that the curbing has to be fixed. Since Mr. Stapinski did not Appeal the ORDER, the ORDER still stands.

Ms. Kellman asked if there was anything the Board can do to solve this problem. Mr. Carbone stated that the Board could direct him to file a criminal complaint with the court. The goal had been to have this work completed before Winter. Things got more complicated when the Architectural Access Review Board (AARB) got involved and issued more work to be done. The AARB had required the work to be completed by November 1, 2014. Ms. Kellman asked if Mr. Carbone could speak to the AARB and get things going. Mr. Carbone replied that he could speak with the Building Inspector, Chris Clemente. In his e-mail to Mr. Carbone, Mr. Stapinski had stated that he would have plans ready for October 1, 2014, so another option could be that Mr. Carbone give the Chairman an update if Mr. Stapinski meets that deadline. Dr. Dwaraknath was concerned that if this is not done soon, the weather could be an excuse and this work could still not be completed next Spring. Mr. Carbone stated that concrete could be poured through the end of December. Ms. Martin stated that the Board could strongly make it known that it wants this done in a timely manner. According to Mr. Stapinski's e-mail the job should go out to bid on November 1, 2014, so the Board decided to continue the Hearing.

Motion by Ms. Martin, seconded by Dr. Dwarakanath, to continue the Hearing on the Casco Crossing concrete repair with the understanding that Mr. Carbone will check in with Building Inspector, Chris Clemente, for any updates from the State Board, and that a written update will be provided by October 1, 2014, and that attendance at the October 20, 2014 Board of Health Meeting will be dependent on the completeness of the response on October 1, 2014. Unanimous approval.

V. Subdivision Definitive Plans

- N/A

VI. Plan Review

- **DWRP – Variances/Local Upgrade Approval**

- **276 North Main Street – The Casino @ Arden – SAS to be 4’ above SHWT, 5’ Required** – Ms. Martin asked if the building was too far back to make a connection to sewer, and Mr. Carbone confirmed that. On the locus map, the house, the barn and the old playhouse is shown. The casino is behind Mrs. Wood’s house. One of the mandates with this property is to keep as historic and unchanged as possible. The Engineer, William DuFresne, explained to Mr. Carbone that the old casino never had a septic system, but they now want to make it more modern. The proposed septic system will have very limited flow if any at all. It is a space with limited use, but there is a possibility that with the rebuild, the community may use it.

Motion by Ms. Martin, seconded by Dr. Dwarakanath, to approve the LUA for the SAS to be 4’ above SHWT, where 5’ is required. Unanimous approval.

VII. Staff Reports

A. Director’s Reports:

- **Important Dates:**

- October 20, 2014 at 6 p.m. – Board of Health Meeting
- October 22, 23 & 24, 2014 – MHOA Conference
- October 25, 2014 – Fire Department Open House
- November 17, 2014 at 6 p.m. – Board of Health Meeting

B. Nurses’ Report for August, 2014 – The Nurses’ Report for August, 2014, was for informational purposes only.

C. Inspectors’ Reports for August, 2014 – The Inspectors’ Reports for August, 2014, were for informational purposes only.

VIII. Board Member Reports

- N/A

IX. Adjournment

Motion by Ms. Martin, seconded by Ms. Kellman, to adjourn at 8:47 p.m. Unanimous approval.